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**EDL****CV 09****5443**

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

REBECCA SWIFT, on behalf of herself and  
all others similarly situated,

Case No. \_\_\_\_\_

**CLASS ACTION****COMPLAINT FOR VIOLATIONS OF:**

- (1) THE UNFAIR COMPETITION LAW;
- (2) THE CONSUMERS LEGAL  
REMEDIES ACT; AND
- (3) UNJUST ENRICHMENT.

*VIA FAXIMILE***JURY TRIAL DEMANDED**ZYNGA GAME NETWORK INC.; and  
FACEBOOK, INC.

Defendants.

1 Plaintiff Rebecca Swift ("Plaintiff"), individually and on behalf of all others similarly  
2 situated, alleges by and through her attorneys, upon information and belief, as follows:

3 **NATURE OF THE ACTION**

4 1. This case seeks to remedy a fraudulent scheme perpetrated by the Defendants who  
5 utilize social networking sites such as Facebook and MySpace, to lure unsuspecting consumers  
6 into signing up for services and goods that they do not want or need. Specifically, the Defendant  
7 Zynga Game Network Inc. ("Zynga") is in the business of developing and making available to  
8 users of Facebook, MySpace, and other social networking sites a large variety of popular on-line  
9 games including but not limited to Mafia Wars, Zynga Poker, FarmVille, Vampires, YoVille!,  
10 and Roller Coaster Kingdom. Although users are allowed to play the Defendants' games free of  
11 charge, the Defendants have developed various methods to "monetize" these otherwise free  
12 games.

13 2. Specifically, the games are designed to allow players to earn "virtual currency" in  
14 each game. Players are then able to spend this virtual currency to purchase virtual on-line goods,  
15 unlock new levels of the game, or otherwise make the game more enjoyable. Virtual currency  
16 can be earned by accomplishing various tasks in the game or by simply purchasing it with real  
17 money directly from Zynga. However, a third way to obtain virtual currency is by participating  
18 in one of the many advertisements or "special offers" that are made available to users of each  
19 game. It is these offers, generally referred to in the industry as "lead-gens" (lead generators) that  
20 have caused widespread deception of players of Zynga games.

21 3. For example, FarmVille is a game that is promoted and made available through  
22 Facebook's social networking site. This game presents a "virtual world" where players can start  
23 and manage their own virtual farmers. In this game, users must have game cash to expand their  
24 farm, purchase supplies, etc. Zynga allows FarmVille players to purchase this virtual cash  
25 directly with a credit card or, alternatively, the user can respond to a special offer or  
26 advertisement that appears within the game.

27 4. One of the lead-gens that often appeared on various Zynga games is an on-line "IQ  
28 test." The special offer indicates that the user can earn additional virtual currency by obtaining a

1 certain score on an on-line IQ test. To take the test, the consumer must provide their cell phone  
2 number and they are told that the results of the test will be sent to them via text message.  
3 However, what the user does not know is that by providing their cell phone number, they have  
4 unwittingly subscribed to a useless SMS service and will be billed on a monthly basis through  
5 their cell phone bill. Users who manage to discover the obscure charge on their phone bill are  
6 then met with hurdles as they attempt to cancel the service and/or obtain a refund. This is just an  
7 example of the many deceptive Zynga offers and advertisements that have harmed consumers  
8 throughout the United States.

9       5. Recently, executives of Zynga admitted that lead-gens appearing through its game  
10 applications were designed to mislead consumers and generate revenue for its business. In a  
11 recent speech, Zynga CEO, Mark Pincus, described how shortly after founding Zynga he  
12 desperately needed revenue in order to keep control of his company. He then boasted that this  
13 revenue was primarily generated through scams such as the one described above:

14       “Like I needed the revenue now. So, so I funded the company myself but I  
15 did every horrible thing in the book to just get revenues right away. I mean  
16 we gave our users poker chips if they downloaded this wiki toolbar, which  
17 was like . . . I don’t know. I downloaded it once and I couldn’t get rid of it.  
18 We did anything possible to just get revenues so that we could grow and be a  
19 real business.”

20       6. After making this public admission, many media outlets began to question Zynga  
21 and Facebook’s practices surrounding these advertisements. In response to this controversy, in  
22 November 2009 Zynga purports to have banned all advertisements and special offers promulgated  
23 through its games. In fact, Zynga’s CEO recently acknowledged that *all* of the advertisements  
24 published through their site would be banned “*until we see any that offer clear user value.*”  
25 Additionally, Facebook has recently amended its user policies to attempt to prohibit the type of  
26 on-line advertisements that have misled so many people. However, despite taking these steps,  
27 neither Zynga nor Facebook have offered to reimburse any of the millions of users who have been  
28 misled by the bogus advertisements and special offers promulgated through their applications.

## **JURISDICTION AND VENUE**

7. The aggregate amount in controversy for the Class exceeds \$5,000,000. Plaintiff seeks to certify a nationwide class consisting of individuals who reside in all 50 states. Defendants, Facebook, Inc., and Zynga Game Network, Inc., are Delaware corporations with their principal places of business in Palo Alto and San Francisco, respectively. Diversity, therefore, can be found because, under U.S.C. §1332(d)(2)(A), a member of the class of Plaintiffs is a citizen of a state different from any Defendant. No exceptions to jurisdiction under U.S.C. §1332(d) apply. Accordingly, this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332(d) also known as the Class Action Fairness Act.

8.      Venue in this District is proper in that Defendants do business in the District, maintain their principal places of business in the District, and the Plaintiff resides in the District.

## **INTRADISTRICT ASSIGNMENT**

9. Pursuant to Local Rules 3-5(b) and 3-2(d), assignment to the San Francisco Division is proper because defendant Zynga Game Network, Inc. maintains its principal place of business in San Francisco County and a substantial part of the events or omissions that give rise to Plaintiff's claims occurred in San Francisco County.

## **THE PARTIES**

10. Plaintiff Rebecca Swift is a resident of Santa Cruz, California. During the class period Mrs. Swift used various Zynga game applications within the Facebook network, including Farmville, Mafia Wars, YoVille!, and Roller Coaster Kingdom. In each of these applications, Zynga attempted to induce her to earn virtual in-game currency by accepting "special offers" from Zynga advertisers. The Plaintiff was misled by the "special offers" promulgated by the Defendants and, as a result, has suffered damages as described below.

11. Defendant Zynga Game Network Inc. is a Delaware corporation with its principal place of business at 365 Vermont St., San Francisco, California 94103.

12. Defendant Facebook, Inc., ("Facebook") is a Delaware corporation with its principal place of business at 156 University Ave., Palo Alto, California 94301.

1       13. Plaintiff alleges, based on information and belief, that at all relevant times each of  
2 the Defendants named herein was an agent, employee, manufacturer, supplier, distributor,  
3 designer, engineer, retailer, seller, franchisee, representative, partner, and related or affiliated  
4 entity or providers of services to or on behalf of each of the other Defendants. On information  
5 and belief, Plaintiff alleges that Defendants and other unnamed third parties conspired and  
6 combined among themselves to commit the acts complained of herein and that each was the joint  
7 venturer and/or partner of the other.

## FACTS

**9 | A. General Allegations**

14. Facebook is the largest social networking site in the world. Facebook is estimated  
to have more than 200 million individual subscribers and annual revenues of approximately \$500  
million per year. As part of Facebook's service, users are allowed to play on-line games against  
other Facebook users. The most popular games played by Facebook users are Mafia Wars,  
YoVille!, FarmVille, and Poker.

15        15. Zynga promotes itself as the top social gaming company on the web, providing a  
16 network of on-line games that can be played by subscribers of networking sites such as Facebook  
17 and MySpace. Mafia Wars, YoVille!, FarmVille, and Poker are among the many games that are  
18 published and hosted by Zynga. It is estimated that more than 40 million individuals throughout  
19 the United States are active players of Zynga's games.

16. There is no cost to users who want to play Zynga's games. However, to earn  
17 revenues, Zynga has intentionally designed its games so that they can be "monetized." What this  
18 means is that all of Zynga's games allow users to collect virtual currency that can be used  
19 throughout the game to purchase virtual items or unlock options that make the games more  
20 enjoyable. The only way that this virtual currency can be collected is by 1) earning it on-line by  
21 accomplishing virtual tasks; 2) buying it directly from Zynga with a credit or debit card; or 3)  
22 responding to an on-line advertisement or special offer that is presented during the game.  
23

27        17. Most, if not all, of the on-line advertisements presented through Zynga are scams.  
28 The advertisements are highly misleading and often result in users subscribing to goods or

1 services that they do not want or need. Consumers who attempt to cancel services or obtain  
2 refunds are then met with roadblocks designed to thwart cancellation and/or refunds or otherwise  
3 "save" the customer.

4 18. Over the past four years, Zynga and Facebook have generated enormous profits  
5 through these false and misleading special offers. In fact, Andre Trader, co-founder of Zynga,  
6 has admitted that its on-line ads are a large reason for Zynga's growth and now account for up to  
7 one-third of its revenue. With industry sources estimating annual revenue from \$100 million to  
8 \$250 million per year, this means that Zynga has potentially obtained \$33 to \$84 million per year  
9 from consumers responding to the "special offers" it promotes and promulgates through its on-  
10 line games.

11 19. Additionally, Plaintiff is informed and believes that Facebook shares a substantial  
12 portion of the revenue generated from the false and misleading advertising promulgated through  
13 Zynga games. In fact, it is estimated that from 10 to 20 percent of Facebook's \$500 million in  
14 annual revenue is generated through games published by Zynga. Plaintiff is further informed and  
15 believes that Facebook is fully aware of the false and misleading nature of the advertising  
16 promulgated through Zynga's applications and that, despite this, it actively engages in promoting  
17 Zynga's games to the public.

18 **B. Facts Specific To Plaintiff**

19 20. During the class period, Plaintiff, Rebecca Swift, has used various Zynga game  
20 applications within the Facebook network, including FarmVille, Mafia Wars, YoVille!, and  
21 Roller Coaster Kingdom. In each of these applications, Zynga has attempted to induce her to earn  
22 virtual in-game currency by accepting "special offers" from Zynga advertisers.

23 21. In or around April 2009, Mrs. Swift provided her cell phone number to a Zynga  
24 advertiser and/or lead generator in order to be texted a "code" that she could redeem for  
25 "Yocash"—virtual currency within Zynga's Yoville application. Neither Zynga nor Zynga's  
26 advertisers and/or lead generators informed Mrs. Swift that providing her cell phone would result  
27 in any charges to her phone bill. On or about April 16, 2009, and three times afterwards, Mrs.  
28 Swift's cell phone was charged \$9.99 without her knowledge or consent.

1       22. On or about June 14, 2009, Mrs. Swift observed an advertisement for a "risk-free  
2 Green Tea Purity Trial" while playing the game YoVille!. The advertisement indicated that  
3 Plaintiff could earn virtual YoVille! cash (or "YoCash") if she participated in a "risk free trial"  
4 for a green tea herbal supplement. The advertisement indicated that the Plaintiff could cancel the  
5 trial anytime within 15 days of her initial order. To participate in the program, Plaintiff provided  
6 her debit card number and was charged \$5.95 for shipping and handling.

7       23. Mrs. Swift sent an email to the apparent manufacturer of the supplements asking to  
8 cancel her "Green Tea Purity Trial" on or about June 24, 2009, after she received, mailed from  
9 China, a package of 30 green tea pills and three tea bags.

10      24. On or about July 4, 2009, "Support Green Tea" emailed Mrs. Swift, informing her  
11 that she would be charged \$79.95, despite Ms. Swift's specific prior request to cancel her trial  
12 offer. Ms. Swift was unsuccessful at any further attempts to contact "Support Green Tea" via  
13 telephone. On July 6, 2009, Ms. Swift's bank account was charged \$79.95, as well as a \$2.38  
14 "foreign transaction fee." On July 20, 2009, Ms. Swift's bank account was charged \$85.90, as  
15 well as another \$2.38 foreign transaction fee. Sometime afterwards, she received, again mailed  
16 from China, a package of 30 green tea pills and three tea bags. The materials shipped to Mrs.  
17 Swift are worth far less than the \$165.85 charged to Mrs. Swift's account after she requested to  
18 cancel the "free" trial offer that she accepted in exchange for "Yocash" in Zynga's Yoville  
19 application. Despite repeated efforts, Mrs. Swift has been unable to obtain a refund of any of the  
20 amounts charge to her for this "risk free" trial.

21      25. Plaintiff is informed and believes that Facebook and Zynga both profited and  
22 shared the funds that were taken from Plaintiff and that both were aware, or should have been  
23 aware, of the false and misleading nature of the advertisement presented to Plaintiff. Plaintiff  
24 also alleges that both Facebook and Zynga actively encouraged Plaintiff to accept the  
25 advertisement at issue through the design and promotion of their on-line games. As such,  
26 Plaintiff alleges that Facebook and Zynga are jointly and severally liable as co-conspirators, joint  
27 venturers, and aiders and abettors.

28

## **CLASS ACTION ALLEGATIONS**

24. Plaintiff brings this action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated. Plaintiff seeks to represent the following Class ("Class"):

**All persons in the United States who from November 2005 acquired or accumulated game currency or other items within a Zynga game application in response to any lead-generating offer or advertisement presented through that application and who charged money as a result thereof.**

8       25. Subject to additional information obtained through further investigation and  
9 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
10 amended complaint. Specifically excluded from the Class are business entities for purposes of  
11 Plaintiff's claim for relief under the Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*  
12 Also specifically excluded are Defendants, their officers, directors, agents, trustees, parents,  
13 children, corporations, trusts, representatives, employees, principals, servants, partners, joint  
14 venturers, or entities controlled by Defendants, and their heirs, successors, assigns, or other  
15 persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or  
16 any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

17       26.     Numerosity - Fed.R.Civ.P. 23(a)(1) - Members of the Class are so numerous  
18                  that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis  
19                  alleges, that the proposed class contains more than 100,000 members. The precise number of  
20                  class members is unknown to Plaintiff. Class members are likely to be known by Defendants,  
21                  however, and thus, may be notified of the pendency of this action by mail, email, and  
22                  supplemented (if deemed necessary or appropriate by the Court) by published notice.

**27. Existence and Predominance of Common Questions of Fact and Law —**

24 Fed.R.Civ.P. 23(a)(2), 23(b)(3) - There are questions of law and fact common and of general  
25 interest to the class. Said common questions include, but are not limited to, the following:

26           a.     Whether Defendants' conduct as described herein constitutes an unfair, fraudulent  
27 or unlawful business practice prohibited by California Business and Professions Code Sections  
28 17200 *et. seq.*

- 1           b.     Whether the advertisements promulgated and promoted through Zynga's game  
2 applications were likely to deceive the public;
- 3           c.     Whether Zynga and Facebook conspired to mislead consumers ;
- 4           d.     Whether Zynga and Facebook acted in concert and/or were joint venturers in  
5 connection with advertisements promoted through Zynga's applications;
- 6           e.     Whether Facebook had a duty to protect users from false and misleading  
7 advertising promoted through Zynga's applications;
- 8           f.     Whether Facebook and Zynga knew or reasonably should have known that the  
9 advertising promulgated through Zynga game applications were likely to deceive the public;
- 10          g.     Whether the Defendants' uniform conduct as described herein violates California's  
11 Consumers Legal Remedies Act;
- 12          h.     Whether Defendants have been unjustly enriched as a result of the conduct  
13 described herein;
- 14          i.     Whether Plaintiff and class members are entitled to restitution, declaratory, and  
15 injunctive relief as sought herein.
- 16          j.     Whether Defendants omitted material facts in connection with their lead-gen  
17 offers.
- 18          k.     Whether Defendants' conduct caused damage to Plaintiff and members of the  
19 Class, and the appropriate measure of such damages;
- 20          l.     Whether Plaintiff and the Class are entitled to restitution.
- 21          28.    Defendants' defenses, to the extent that any such defenses apply, are applicable  
22 generally to Plaintiff and the entire Class and are not distinguishable as to proposed Class  
23 members.
- 24          29.    Typicality – Fed.R.Civ.P. 23(a)(3) - Plaintiff's claims are typical of the claims of  
25 the Class as a whole, all of whom have sustained and/or will sustain damages as a proximate or  
26 legal result of the common course of conduct of Defendants. Plaintiff's claims are typical of the  
27 Class because Defendants subjected all Class members to the same course of conduct.
- 28

1           30. Adequacy – Fed.R.Civ.P. 23(a)(4) - Plaintiff will fairly and adequately protect  
2 the interests of the Class and has no interest antagonistic to those of the Class. Plaintiff has  
3 retained counsel that are highly experienced in the prosecution of complex consumer class action  
4 litigation.

5           31. Superiority – Fed.R.Civ.P. 23(b)(3) - A class action is superior to other available  
6 means for the fair and efficient adjudication of the claims of Plaintiff and members of the class.  
7 Although the injury suffered by each individual class member likely ranges from \$100 to \$300,  
8 injury of such magnitude is nonetheless relatively small given the burden and expense of  
9 individual prosecution of the complex and extensive litigation necessitated by Defendants'  
10 conduct. It would be virtually impossible for members of the class individually to redress  
11 effectively the wrongs done to them. Even if the members of the Class could afford such  
12 individual litigation, the court system could not. Individualized litigation presents a potential for  
13 inconsistent or contradictory judgments arising from the same set of facts. Individualized  
14 litigation increases the delay and expense to all parties, and to the court system, presented by the  
15 complex legal and factual issues of the case. By contrast, the class action device presents far  
16 fewer management difficulties, and provides the benefits of single adjudication economy of scale  
17 and comprehensive supervision by a single court.

18           32. In the alternative, the Class may be certified under Rule 23(b)(1) and/or (b)(2),  
19 because:

- 20           (a) The prosecution of separate actions by individual Class members would create  
21           the risk of inconsistent or varying adjudication with respect to individual Class  
22           members that would create incompatible standards of conduct for Defendants;  
23           (b) The prosecution of separate actions by individual Class members would create  
24           a risk of adjudications with respect to them that would, as a practical matter, be  
25           dispositive of the interests of other Class members not parties to the  
26           adjudications, or substantially impair or impede their ability to protect their  
27           interests; and/or

28

(c) Defendants have acted or refused to act on the grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

## FIRST CLAIM FOR RELIEF

**(Against All Defendants for Violation of the Unfair Competition Law)**

33. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

34. Defendants' acts and practices, described herein, constitute unlawful, unfair or fraudulent business practices in violation of the Unfair Competition Law, Business & Professions Code sections 17200 et seq.

35. Defendants' acts and practices, described herein, violate the CLRA, Civil Code section 1770, et seq., constitute unlawful, unfair or fraudulent business practices in violation of the Unfair Competition Law, Business & Professions Code sections 17200 et seq.

36. The above-described unfair, unlawful and fraudulent business practices conducted by Defendants present a threat and likelihood of harm and deception to members of the Class and the general public in that Defendants have systematically perpetrated and continue to perpetrate the unfair, unlawful and fraudulent conduct upon members of the public by engaging in the conduct described herein. The utility of Defendants' conduct, if any, is outweighed by the harm it has caused to Plaintiff and the Class.

37. Plaintiff and the Class have been lost money and were injured by and as a result of defendants' unfair and unlawful practices.

38. Pursuant to Business and Professions Code sections 17200, 17203 and 17204, Plaintiff, on behalf of himself, the Class and the general public, seeks an order of this Court: enjoining Defendants from continuing the unfair business practices described herein. Plaintiff additionally requests an order awarding Plaintiff and the Class restitution of all monies wrongfully acquired from the class by means of such unlawful acts and practices, so as to deter Defendants and to rectify Defendant's unfair and unlawful practices and to restore any and all

1 monies to Plaintiff and the Class and to the general public, which are still retained by Defendants,  
2 plus interest, attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure section  
3 1021.5.

4 **SECOND CLAIM FOR RELIEF**

5 **[Against All Defendants for Violation of the Consumers Legal Remedies Act]**

6 39. The allegations of the preceding paragraphs are incorporated by reference as if  
7 fully set forth herein.

8 40. Defendants provide "services" within the meaning of Civil Code sections 1761(a),  
9 1761(b) and 1770.

10 41. Defendants are "persons" within the meaning of Civil Code sections 1761(c) and  
11 1770.

12 42. Users of Defendants' services, including Plaintiff and the Class, are "consumers"  
13 within the meaning of Civil Code section 1761(d) and 1770.

14 43. Plaintiff's and each and every Class member's use of the services offered by  
15 Defendants constitute "transactions" within the meaning of Civil Code sections 1761(e) and 1770.

16 44. Defendants' unfair or deceptive acts or practices as described herein were  
17 undertaken by Defendants in transactions intended to result or which resulted in the sale of goods  
18 and services to consumers, and were intended to induce, and did in fact induce, Plaintiff and the  
19 Class to purchase for personal use such good and services, which they would not have otherwise  
20 purchased. Further, Defendants' suppression and/or concealment of the material facts as  
21 described herein was calculated to induce, and did in fact induce, Plaintiff and the Class to  
22 provide valuable consideration to Defendants.

23 45. Defendants' joint and concerted practices, acts and course of conduct as described  
24 herein violates the Consumers Legal Remedies Act ("CLRA") in that they caused the following  
25 unfair and deceptive practices to occur:

26 A. Defendants "represent[ed] that goods or services . . . have sponsorship,  
27 approval, characteristics, ingredients, uses, benefits, or quantities which they  
28 do not have;" in violation of section 1770(a)(5) of the CLRA

- 1           B. Defendants advertised goods and services with the intent not to sell them as  
2           advertised. Civ. Code § 1770(a)(9);  
3           C. Defendants represented that a transaction confers or involves rights, remedies,  
4           or obligations which it does not have or involve, or which are prohibited by  
5           law. Civ. Code § 1770(a)(14); and  
6           D. Defendants “represented that the transactions were supplied in accordance with  
7           a previous representation when they were not” in violation of section  
8           1770(a)(16) of the CLRA

9           46. Defendants’ practices, acts and course of conduct as described above, are likely to  
10          mislead a reasonable consumer acting reasonably under the circumstances to her or her detriment.  
11          In engaging in their violations of the CLRA, Defendants actively concealed and failed to disclose  
12          material facts about the true characteristics of the transactions leading to Plaintiff’s and the Class  
13          Member’s response to lead-gen offers.

14           47. Defendants engaged in these unfair and/or deceptive acts and practices with the  
15          intent that they result, and which did result, in the transactions alleged herein. As a direct and  
16          proximate result of Defendants’ violations of law, Plaintiff and the Class have been injured.  
17          Pursuant to the provisions of Civil Code section 1782, Plaintiff has provided notice to Defendants  
18          in conjunction with the filing of this complaint (although the Complaint is an appropriate notice  
19          of violations) of her intention to seek damages under Civil Code sections 1750 et seq. unless these  
20          Defendants correct, repair, replace or otherwise rectify Defendants’ violations of the CLRA. The  
21          notice demands that Defendants take steps as are appropriate to rectify the violations and  
22          requiring Defendants to give notice to all affected consumers of their intent to act. If Defendants  
23          fail to adequately respond to Plaintiff’s demand within thirty (30) days from the date the notice is  
24          served, Plaintiff will amend this complaint to seek actual and punitive damages according to the  
25          CLRA.

26           48. By the filing of this Complaint, Plaintiff seeks an order enjoining the unlawful  
27          practices described herein and an Order requiring Defendants to notify the Class of their  
28          violations of the CLRA and the remedy they will provide to them. Plaintiff and the Class are

1 entitled to equitable relief in the form of restitution and disgorgement of all earnings, profits,  
2 compensation and benefits obtained by Defendants as a result of their violations of the CLRA,  
3 along with other appropriate relief including reasonable attorneys' fees and expenses.

4

**THIRD CLAIM FOR RELIEF**  
5 [Unjust Enrichment]

6 49. The allegations of the preceding paragraphs are incorporated by reference as if  
7 fully set forth herein.

8 50. Defendants have benefited and been enriched by the above-alleged conduct.  
9 Defendants have collected fees and generated revenue from the unlawful conduct described  
10 above.

11 51. Defendants have knowledge of this benefit.

12 52. Defendants have voluntarily accepted and retain this benefit.

13 53. The circumstances, as described herein are such that it would be inequitable for  
14 Defendants to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the  
15 Class.

16 54. Plaintiff and the Class are entitled to the amount of Defendants' ill-gotten gains,  
17 including interest, resulting from its unlawful, unjust, unfair and inequitable conduct as alleged  
18 herein. Plaintiff and the Class may make claims on a pro rata basis for restitution.

19 55. Accordingly, and in addition, Plaintiff seeks the imposition of a constructive trust  
20 on those monies by which the Defendants have been unjustly enriched as a result of the unlawful  
21 practices described herein.

22

**PRAYER**

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For an order certifying that this action may be maintained as a class action against  
25 Defendants, appointing Plaintiff and her counsel to represent the Class and directing  
26 that reasonable notice of this action be given by Defendants to the Class;  
27 2. For restitution and disgorgement, according to proof, including prejudgment interest  
28 as allowed by law;

3. That pursuant to sections 17203 and 17204 of the Business and Professions Code, Defendants be permanently enjoined from performing or proposing to perform any of the aforementioned acts of unfair and deceptive business practices;
4. That pursuant to section 17206 of the Business & Professions Code, section 1021.5 of the Code of Civil Procedure, and the Court's inherent equitable power, Plaintiff recover her costs, including costs of suit, and reasonable attorneys' fees; and
5. That Plaintiff be entitled to such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

To the full extent available, Plaintiff demands a trial by jury.

Dated: November 17, 2009

# KERSHAW, CUTTER & RATINOFF

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**Attorneys for Plaintiff**

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2 **DECLARATION OF STUART C. TALLEY PURSUANT TO CIVIL CODE § 1780(c)**  
3

4 I, STUART C. TALLEY, declare as follows:

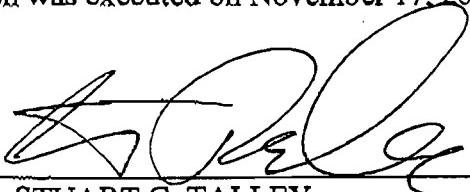
5       1. I am an attorney at law duly licensed to practice before all courts of the State of  
6 California, and am a partner in the firm of Kershaw, Cutter & Ratinoff, counsel of record for  
7 Plaintiff. I have personal knowledge of the matters set forth below and if called as a witness  
8 could and would competently testify thereto.

9       2. I am informed and believe that venue is proper in this court under Civil Code §  
10 1780(c) based on the following facts:

11           (a) Defendants have performed transactions at issue in this action, or have  
12 obtained financial benefit from such transactions, at all times relevant to this action, in the  
13 Northern District of California;

14           (b) At all relevant times herein, Plaintiff resided in the Northern District of  
15 California.

16       I declare under penalty of perjury under the laws of the state of California that the  
17 foregoing is true and correct and that this declaration was executed on November 17, 2009 in  
18 Sacramento, California.



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20 STUART C. TALLEY  
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